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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/568,462	02/15/2006	Wolfgang Roehrl	1703 1491US	2365

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DREISS, FUHLENDORF, STEIMLE & BECKER
POSTFACH 10 37 62
D-70032 STUTTGART,
GERMANY

EXAMINER

KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

MAIL DATE	DELIVERY MODE
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07/13/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/568,462

Applicant(s)

ROEHRL ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006 and 12 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/15/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 18 – 22, 24 – 26 and 28 – 34 are rejected under 35 U.S.C. 102(e) as being anticipated by Datta et al. (US 2002/0165514).

With reference to claim 18, Datta et al. (hereinafter "Datta") discloses a disposable diaper for incontinent care, the disposable diaper comprising a hip belt (107), said hip belt defining a closed hip opening in a peripheral direction and having means for opening and closing said hip belt (60); a main diaper portion (27), said main diaper portion having a front region, a rear region, an intermediate crotch region (figure 1), a liquid impermeable back sheet, a liquid permeable top sheet, and an absorption body, said main diaper portion also having two intended breaking lines (70) disposed in said main diaper portion and extending from a longitudinal end region of the main diaper portion to the crotch region, wherein a middle section of the main diaper portion extending between said intended breaking line is structured and dimensioned to fold out and open away from said user along the intended breaking lines in the main diaper

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portion to expose an incontinent region of the user (page 7 – 0067); first closing means for attaching said main diaper portion to the hip belt in a detachable manner at a longitudinal end of the front region such that, with the hip belt applied, a user raises said main diaper portion between the legs and attaches a free longitudinal end of the main diaper portion to the hip belt in a detachable fashion; and second closing elements communicating with said middle section to re-attach said middle section to said hip belt or to bordering regions of said main diaper portion said middle section has been folded or opened away from the user as set forth on pages 7 – 9, [0067 – 0086].

With respect to the claimed functional limitations, the examiner contends that the article of Datta is fully capable of performing the recited functions and reminds the applicant that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

As to claims 19, 22 and 24, Datta discloses the main diaper portion with the claimed width as set forth in [0065].

With reference to claim 20, Datta discloses a diaper wherein a width of the middle section varies in a longitudinal section and decreases from a longitudinal end region of the main diaper portion towards the crotch region as set forth in figure 4 as shown by the hourglass shaped absorbent core. Likewise, the examiner contends that any width in relation to any other width may be considered in order to meet the claimed limitations.

With respect to claim 21, Datta discloses a diaper wherein regions of the main diaper portion bordering the intended breaking lines are configured in a longitudinally extending fashion as set forth in figure 6.

As to claims 25 and 26, Datta discloses a diaper wherein the second closing means bridge over the intended breaking lines along an entire length as set forth in figure 3.

With reference to claim 28, Datta discloses the diaper wherein regions of the main diaper bordering the intended breaking lines form an impact region for the second closing means as set forth on page 7 [0071].

As to claim 29, Datta discloses a diaper wherein the intended breaking lines are formed by weakened locations as set forth on page 9, [0085].

With reference to claim 30, Datta discloses a diaper wherein the intended breaking lines extend in a transverse direction of the diaper outside of the absorbent body as set forth in figure 4.

As to claim 31, Datta discloses a diaper further comprising the claimed elastification means (58) as set forth on page 5, [0054].

With reference to claims 32 – 34, Datta discloses the claimed first and second closing means as set forth in figures 1 – 3 and 5 – 6.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 23 and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Datta et al. (US 2002/0165514).

The difference between Datta and claims 23 and 27 is the provision that portions of the diaper have a specific length.

Datta teaches these portions to have a length as set forth in the figures.

It would have been obvious to one of ordinary skill in the art to modify the lengths in order to determine the most effective product since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable range involves only a level of ordinary skill in the art.

Response to Arguments

Applicant's arguments filed December 19, 2006 have been fully considered but they are not persuasive.

With respect to the applicant's argument that the bonds of Datta are not disposed on the main body portion, the examiner disagrees. As shown in the figures, the portion on which the bonds are disclosed is considered as part of the main body portion. Likewise, the bonds have a length that extends downward which is considered toward or to the crotch region. Further, the examiner contends that if one completely pulls down the article after breaking the bonds, the article will expose an incontinent region as claimed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele Kidwell whose telephone number is 571-272-4935. The examiner can normally be reached on Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michele Kidwell
Primary Examiner
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